Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	**WC Docket No. 07-245**
	)	
Implementation of Section 224 of the Act;	)	**RM-11293**
Amendment of the Commission's Rules and	)	
Policies Governing Pole Attachments	)	**RM-11303**
	)	

COMMENTS OF CAVALIER TELEPHONE, LLC

Cavalier Telephone, LLC ("Cavalier"), respectfully submits the following comments in response to the November 20, 2007 Notice of Proposed Rulemaking ("NPRM") issued by the Federal Communications Commission ("the Commission") in this docket.[1] Cavalier Telephone, a competitive local exchange carrier headquartered in Richmond, Virginia, provides local, long distance, broadband, and IPTV services in about 20 states in the Middle Atlantic, Midwest, and Southeastern United States.

Cavalier is participating in this proceeding to focus on terms and conditions of access to pole attachments. Cavalier's ability to deploy voice and broadband services has often been undermined because of delays and unreasonable charges relating to access to utilities poles. As a result, many customers who cannot otherwise receive reasonable voice and broadband services are either unable to obtain Cavalier's services or are required to pay excessive amounts from incumbent carriers for voice and broadband.

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[1] *In re Implementation of Section 224 of the Act,* WC Docket No. 07-245; RM-11293; RM-11303, 22 FCC Rcd 20195 (2007)

I. Cavalier supports the Commission's adoption of the best practices portion of the NPRM

On December 7, 2005, Fibertech Networks, LLC ("Fibertech") petitioned the Commission to conduct a rulemaking to adopt seven "standard practices" for pole and conduit access.[2] Cavalier supports the best practices set forth in that petition, noting that such practices will allow the continued construction of facilities based alternatives to ILEC loops by Cavalier and other competitive carriers.[3] Indeed, the Commission has recognized in the past that pole attachments are crucial to the development of competition.[4] Cavalier knows of no practical way for competitive communications providers to construct redundant pole lines where poles already exist, and conduit construction cannot be economically justified in many circumstances. Therefore, to accomplish the FCC's goal of expanding facility-based competition, competitors much have efficient access to existing utility poles and conduit. Cavalier opines that rules are needed in order to set objectively reasonable expectations for non-discrimination and

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[2] Fibertech Networks, LLC, Petition for Rulemaking, RM-11303 (filed Dec. 7, 2005). *See Pleading Cycle Established for Petition for Rulemaking of Fibertech Networks, LLC*, RM-11303, Public Notice, 20 FCC Rcd 19865 (2005); *Fibertech Networks, LLC, Petition for Rulemaking*, RM-11303, Order, 21 FCC Rcd 155 (WCB 2006).

[3] The best practices include:

1. Allow use of boxing and extension arms where: a. such techniques would render unnecessary: a. pole replacement or rearrangement of electric facilities; b. facilities on the pole are accessible by ladder or bucket truck; and c. the pole owner has previously allowed such techniques.
2. Establish shorter survey and make-ready time periods.
3. Allow competitors to hire utility-approved contractors to perform field surveys and make-ready work.
4. Permit installation of drop lines to satisfy customer service orders without prior licensing.
5. Allow competitors to search utility records and survey manholes to determine availability of conduit, and limit charges if the utility performs these functions.
6. Allow utility-approved contractors to work in manholes without utility supervision.
7. Require ILECs to share building-entry conduit with CLECs.

[4] *See, e.g., In re Implementation of Section 703(e) of the Telecommunications Act of 1996, Amendment of the Commission's Rules and Policies Governing Pole Attachments*, CS Docket No. 97-151, Report & Order, 13 FCC Rcd 6777, FCC 98-20, at ¶ 2 (rel. Feb. 6, 1998).

guidelines for compliance (for the benefit of those who have the obligation to administer fair access to the publicly-funded rights-of-way).

In particular, one problem that is noted in the best practices which Cavalier encounters is that there are many cases in which the ILEC is the only attacher in the communications space of the pole but has placed its facilities at a location that leaves substantial space for attachment between the minimum clearance location and the ILEC's actual attachment. When a competitor applies to the ILEC for an attachment license, the ILEC requires the new attacher to pay make-ready costs to lower the ILEC's attachment. Often, that ILEC lowers its attachment only enough to accommodate the new entrant, so that the next applicant must go through the same process of paying make-ready costs to move the ILEC's facilities a second time.

ILECs and other pole owners are not the only attaching parties who may have wasted pole space by making improper attachments of their facilities. In Cavalier's experience, cable television companies, municipalities and other CLECs are often found to have attached their facilities in a manner or location that impairs future access to the communication space on poles. Under most pole attachment agreements and pole owner policies, the newest applicant for attachment must pay all parties' make-ready costs to accommodate its new facility, even if it means paying to correct a previous attacher's improper use of pole space.

To resolve these problems, Cavalier recommends the following: (a) if the ILEC is claiming the right to be the bottom attacher on any joint use pole, then FCC rules should require the ILEC to attach its facilities at the pole's minimum clearance level and move pre-existing attachments to that position; or (b) if the ILEC does not wish to move

existing facilities to the minimum clearance level at its own expense, it should permit new attaching parties to cross over its facilities in a reasonably acceptable fashion and attach in a lower position. In no event should a new attacher be required to pay make-ready costs for a previous attaching party (including the pole owner) when the costs are necessitated by that previous attaching party's facilities having been attached in a manner that is inefficient and wastes pole space. Any make-ready work undertaken should be engineered to increase attachment space on the poles to the greatest extent possible, so as to minimize the need for future make-ready work.

II. The Commission should revise the make-ready process to require pole owners to allow a single entity to perform the relevant work as opposed to mandating that requesters arrange for work on an individual basis

As indicated above, "make-ready" work involves any work that must be completed to allow for the new attachment and may include the rearrangement of existing facilities, such as cables and electrical transformers, or the replacement of existing poles with larger poles. If "make-ready" work is necessary in order for the pole to accommodate Cavalier's proposed attachment, Cavalier generally is required to pay the utility's estimated costs before the utility will actually do the work, as well as each attacher's cost for modifying their attachment.

Cavalier recommends that the Commission overhaul the make-ready process by mandating that pole owners (utilities or ILECs) be required to employ a single entity to perform all make-ready work at the same time (for multiple attachers), instead of providing that individual attachers be responsible for their own make-ready work. For example, Cavalier has encountered the following untenable situation: Pole Owner X owns Pole Y and has an attachment on it, along with five other companies (cable, other

CLECs, etc.) utilizing the pole. Pursuant to current industry practice, each attacher on Pole Y is responsible for the make-ready work related to their attachment. There is no financial incentive on Pole Owner X's part to coordinate all of the other parties, despite clear anti-competitive reasons for the other attachers to not perform such work in a timely and cost efficient manner. As such, Cavalier has encountered multiple parties making several trips to a pole line (*e.g.*, to conduct engineering, perform the work, inspect the final results) over an unreasonably long period of time (months) and being billed for each and every trip, when in fact the sum of the needed work was not overly complicated if it had been performed as a unit.

Cavalier proposes that the Commission adopt a cost effective mechanism which would allow for one single, qualified entity to perform all attachments/relocations for all parties on a given pole or stretch of poles. Cavalier believes such a system would be a cost-effective and efficient use of resources that would allow for timely attachments.

III. The Commission should implement efficient processes and appropriately priced fees to allow for the timely and fair grant of pole attachment applications

The Commission's current pole attachment have limited provisions regarding the terms and conditions of access and the process of modifying poles and conduit to accommodate third party attachments, *i.e.*, the make-ready process. Such matters typically have been determined on a case-by-case basis through adjudications at the Commission. In their petition for rulemaking noted above, Fibertech previously raised the reasonableness of utilities' pole access conditions, citing poor performance by utilities including delayed response times and the prohibition of certain construction techniques.

The Commission should adopt a rule specifying the maximum period of time that a utility has to issue a pole attachment permit once it receives an application. Cavalier requires access to poles to provide voice and broadband services to customers. Potential customers need to know when they should reasonably expect to receive their services. A potential customer does not want to sign up for a service not knowing whether it will begin receiving the service in months or in years. It is imperative that there be a reasonable level of predictability with respect to when attachments will be completed. The disparity in time periods for utilities to grant access to their poles is alarming. Some utilities provide Cavalier access within three months after receiving an application, others take more than five times as long. It does not take multiple months to complete a pole attachment issue. Cavalier thereby supports Sunesys' position to limit survey and make-ready work, but further believes that a customer's satisfaction hinges on a make ready process that does not exceed eight weeks, particularly when understanding that the final construction and configuration will also take some additional time.[5] At the very least, the Commission should require a maximum period of time from the date of a pole attachment application to the date of issuance of an attachment permit.

Furthermore, Cavalier notes that the fees charged by pole owners for services exceed reasonable amounts. The problem of fees may include exorbitant minimum charges for very limited surveys, which Cavalier has known to exceed $1000 for conduit searches in some cases. The problem may also include fees structured on a per-pole

[5] *See* Letter from Alan G. Fischel and Jeffrey E. Rummel, Counsel for Sunesys, LLC, to Marlene H. Dortch, Secretary, FCC, in RM-11303 at 2 (Aug. 28, 2007) (proposing to permit utilities six months to complete survey and make-ready work; require utilities to use utility-approved contractors to perform the work if necessary to meet the six-month deadline; and permit utilities to charge only for "compliance neutral" make ready, *i.e.*, work that is necessary to bring the pole to the same level of compliance with NESC standards as the state of the pole before make ready). Cavalier notes that Public Service Company of New Hampshire has maintained a record of average end-to-end service completion (from application to issuance of a license) of under 60 days, including make-ready work.

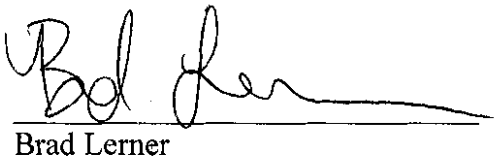
basis. Alternatively, prices may be simply too high because of inefficiency by the pole owner or price gouging. Although Cavalier acknowledges that pole owners are entitled to recover their costs, the charges need to be reasonable. The Commission should implement safeguards to ensure that CLECs like Cavalier are being charged reasonable fees by pole owners

CONCLUSION

Existing poles and conduit structures are critically important to competitive carriers but are often unavailable due to excessive monetary demands and inefficient process of utilities, combined with the unequal bargaining power that pole and conduit owners enjoy. Cavalier in the past has encountered access problems which is harmful to competition. Cavalier urges the Commission to adopt the best practices set forth above in the comments as well as implement a maximum period of time that utility has to issue a pole attachment permit once it receives an application.

Respectfully submitted,

CAVALIER TELEPHONE, LLC



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